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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

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Respondent

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2. The Respondent is Mariposa Dairy, LLC ("Respondent"), who owns and/or operates an animal feeding operation located in the Southwest 1/4, Northeast 1/4, Section 15, T25N, R30W of Newton County.

Statutory and Regulatory Authority

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

4. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

5. Section 504(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

6. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. § 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

7. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include biological materials and agricultural waste discharged to water.

8. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation... from which pollutants are or may be discharged."

9. "Concentrated animal feeding operation" is defined by 40 C.F.R. § 122.23(b)(3) as "an 'animal feeding operation' which meets the criteria in Appendix B of this part."

10. "Animal feeding operation" is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

11. Appendix B to 40 C.F.R. § 122.23 states that an animal feeding operation is a concentrated animal feeding operation if the animal feeding operation confines more than 200 mature dairy cattle and pollutants are discharged into navigable waters through a man-made ditch, flushing system, or other similar man-made device.

12. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.

13. The Missouri Department of Natural Resources ("MDNR") is the agency within the state of Missouri with the delegated authority to administer the federal NPDES Program pursuant to Section 402 of the CWA, implementing regulations, and a Memorandum of Understanding between EPA and MDNR. EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

14. Respondent is a limited liability corporation and is therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. Respondent owns and operates an animal feeding operation under the name Mariposa Dairy ("Facility"), located in the Southwest 1/4, Northeast 1/4, Section 15, T25N, R30W of Newton County.

16. On January 23, 2003, EPA conducted an NPDES inspection of Respondent's animal feeding operation.

17. Neither crops, vegetation, forage growth, nor post-harvest residues were sustained over any portion of the confined feeding areas at the Facility at the time of the inspection, and the Facility has confined and fed or maintained dairy cows for a total of 45 days or more in the 12-month period preceding the inspection. Respondent's Facility is therefore an "animal feeding operation" as defined by 40 C.F.R. 122.23(b)(1).

18. At the time of the inspection, the Facility confined approximately 400 dairy cows.

19. On September 1, 1998, manure-laden wastewater at the Facility was discharged to navigable waters from an irrigation pipe. The discharge from the irrigation pipe constitutes a discharge of pollutants to navigable waters through a man-made device.

20. During an inspection of the Facility conducted by MDNR on April 16, 2002, the MDNR inspector noted evidence of a prior discharge due to overflow from the northeast corner of the wastewater lagoon at the Facility. On April 25, 2002, following this inspection, MDNR issued a Notice of Violation to Respondent for operation of a concentrated animal feeding operation without a permit.

20. The Facility confines more than 200 mature dairy cattle and has discharged pollutants into navigable waters through a man-made ditch, flushing system, or other similar man-made device, and is therefore a "concentrated animal feeding operation" as defined by 40 C.F.R. 122.23(b)(3) and 40 C.F.R. Part 122, Appendix B.

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21. The Facility is a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).
22. The wastewater that has been discharged from the Facility contains biological waste that is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
23. The wastewater that was discharged from the lagoon and from the irrigation pipe at the Facility flowed east and entered a roadside ditch and eventually flowed to the Newtonia Branch of Shoal Creek.
24. The roadside ditch and the Newtonia Branch of Shoal Creek are both "waters of the United States" as defined by 40 C.F.R. Part 122.
25. Respondent has never applied for nor received an NPDES permit for its concentrated animal feeding operation. MDNR issued a Notice of Violation to Respondent on April 25, 2002, for Respondent's operation of a concentrated animal feeding operation without a permit.
26. Respondent's unpermitted discharges of pollutants from the irrigation pipe and the lagoon at the Facility to the waters of the United States are in violation of Section 301(a) of the CWA and implementing regulations.

Compliance Order

Based on the Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. §§ 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

27. Immediately upon receipt of this Order, Respondent shall take all measures necessary to eliminate the discharge of animal waste to waters of the U.S. Respondent shall provide written notice to EPA within thirty days of receipt of this Order, describing all measures it has taken to eliminate discharges.
28. Within 30 days of receipt of this Order, Respondent shall apply to MDNR for a NPDES permit. Respondent shall provide a copy of the permit application to EPA.

Effect of Order

29. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.

30. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Mariposa Dairy, and/or to request additional information from Respondent pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.

31. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any noncompliance with the CWA, including, but not limited to, any noncompliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.

32. If any provision or authority of this Order, or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

33. All submissions to EPA required by this Order shall be sent to:

Paula Higbee
CAFO Enforcement Coordinator
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, KS 66101

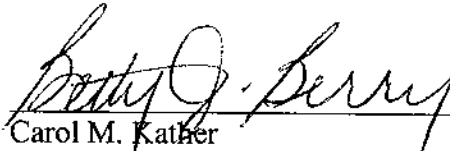
34. Pursuant to 40 C.F.R. §§ 2.201 - 2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the Clean Water Act appear in 40 C.F.R. § 2.302.

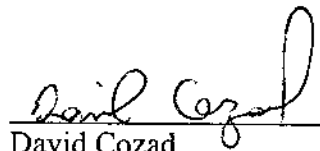
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35. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties of up to \$27,500 per day for each violation, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

36. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Dated this 25th day of April, 2003

for 
Carol M. Kather
Acting Director, Water, Wetlands and Pesticides Division
EPA Region VII


David Cozad
Associate Regional Counsel

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CERTIFICATE OF SERVICE

I certify that on the date noted below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region VII. I further certify that I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance, together with small business compliance assistance information, to the following:

Ann L. Carter
Registered Agent
Mariposa Dairy, LLC
1146 S. Country Club Road
Carthage, MO 64836

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to the following representative of the State of Missouri:

George Parsons
Southwest Regional Office
Missouri Department of Natural Resources
2040 W. Woodland
Springfield, MO 65807

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Date

Debby White